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**FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL**

2008 JUN -2 P 2: 01

May 27, 2008

**Jeff S. Jordan
Federal Election Commission
999 E Street, NW
Washington, DC 20463
FAX: 202 219 3923**

PAGES IN THIS FAX INCLUDING THIS PAGE: 5

Dear Mr. Jordan:

This response is filed on behalf of Association of Community Organizations for Reform Now ("ACORN") with regard to MUR 5970. On its face, the complaint does not describe any specific act by ACORN that constitutes a violation of the Federal Election Campaign Act. Fundamentally, Ms. Sherwood's letter is an exercise in innuendo and vague, unsubstantiated allegations of misconduct. The Commission should, accordingly, find no reason to believe a violation has occurred and dismiss this matter with respect to ACORN.

The complaint is correct on a few points of fact. 1024 Elysian Fields Avenue, New Orleans was an address used by ACORN.¹ [Complaint paragraph 22] Wade Rathke was, indeed, ACORN's founder. [Id.] And Donna Pharr was Assistant Treasurer for ACORN until late 2007. [Complaint paragraph 23]

On the other hand, ACORN never purported to make "independent expenditures, in support of the Edwards Campaign." [Complain paragraph 27] The complaint itself, other than a wholly unsupported statement [Complaint paragraphs 27 and 30 ("all had roles which were allegedly independent of the Edwards Campaign")], provides absolutely no evidence of ACORN making any independent expenditures in this race. Indeed, it is not even clear which election the complainant is referring to. Overall she appears to be making claims about the 2008 Democratic primary, but the payments discussed in paragraphs 28 and 29 occurred in 2006.

¹ At the beginning of this year, the New Orleans offices were moved to a different address.

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In 2006, what ACORN did do was to provide field services to the Edwards campaign, as a subcontractor to Citizens Services Inc., a vendor hired by the Edwards campaign. ACORN was paid for these services. The attached declaration of Mitch Klein, who served as ACORN's Head Organizer in Maryland, explains ACORN's role as a contractor to CSI to carry out the contractual services for which the Edwards campaign hired it. [Klein declaration paragraphs 3-5] This declaration was previously submitted with CSI's response in this matter, but we attach it here for convenience.

In 2008, ACORN did not provide any such services. During the 90-day pre-election period relevant to the content test of the Commission regulations on coordinated and independent expenditures, 11 C.F.R. § 109.21(c)(4)(i), ACORN did not make any public communications that referred to either Edwards or her opponent, Al Wynn. [Katzenberg declaration paragraph 4] Further, ACORN did not make any other communications covered by those regulations. [Katzenberg declaration paragraphs 5 and 7] or re-distribute campaign materials [paragraph 6].

Because Ms. Sherwood does not state with any clarity how ACORN is alleged to have violated the law, it is difficult to respond to her legal claims. However, it appears that she may be suggesting one of two theories: either that ACORN engaged in independent expenditures in support of Donna Edwards, or that ACORN made in-kind contributions by making coordinated public communications that referred to either Ms. Edwards or her opponent. As demonstrated by the attached declarations, neither of these theories is viable, because, except for the services it provided under the CSI contract, ACORN did not make any public communications referring to either candidate during the relevant pre-election periods in the 2006 or 2008 primary campaigns. It therefore cannot have made express advocacy communications in 2006 as would be necessary for the first theory, as they would have to refer to a candidate. The second theory is not viable either. The Katzenberg declaration demonstrates that in 2008 ACORN did not make any communications that would be covered by the content standards of the coordinated communication regulations, 11 C.F.R. § 109.21(c). The Klein declaration proves the same conclusion for 2006, because each of the four covered types of content (electioneering communications, redistributed campaign materials, express advocacy, or public communications that refer to a candidate or party within a fixed pre-election time frame) require or inherently would include a reference to a candidate. Since ACORN did not make any public communications in either cycle that met the content standard of the regulations, it cannot have engaged in coordinated public communications that would be treated as a contribution under FECA and Commission regulations.

Ms. Sherwood spends a lot of ink detailing the fact that ACORN and some other groups share an address in New Orleans. In fact, this address is (or was) the address of Citizens Consulting Inc. ("CCI"), a firm that ACORN has hired to provide administrative, legal, and accounting services. The address is used by ACORN and presumably other CCI clients as an administrative address. Similarly, when ACORN registers for authority to do business in a state, it identifies a registered agent and office in that state. Often, this will be a commercial provider whose numerous other clients also share the same

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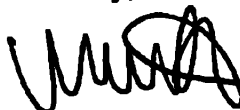
"official" address in the state. Using the same vendor for administrative or registered agent services is not evidence of any improper relationships, if the complaint had even bothered to articulate what those might be.

As part of its contractual relationship with CCI, ACORN agrees to appoint the CCI director as its Assistant Treasurer with authority to act solely on administrative matters in order to carry out the services for which CCI is hired. Because Donna Pharr was CCI Director until late 2007, she served in that capacity to facilitate the provision of administrative and accounting services to ACORN. She did not have any broader authority over organizational program or operations.

Finally, the complaint states that a check from the Edwards campaign for services was sent to the ACORN address. We have not investigated this point, as it does not seem to relate to any alleged misconduct on ACORN's part. However, since ACORN was hired by CSI to fulfill the contract with the Edwards campaign, it is imaginable that a check for CSI could have been inadvertently sent to the wrong address. If that did occur, ACORN staff would have forwarded the check to the correct recipient.

Because, as explained, ACORN's conduct with respect to the 2006 and 2008 Maryland Democratic primary races was entirely consistent with the requirements of FECA, this complaint should be dismissed with a finding of no reason to believe that a violation has occurred.

Sincerely,



**Steve Bachmann
General Counsel**

Association of Community Organizations for Reform Now

FEDERAL ELECTION COMMISSION

RE: MUR 5970

DECLARATION OF STUART KATZENBERG

1. My name is Stuart Katzenberg. I am the Head Organizer for ACORN in Maryland, and have held that position since December of 2006.
2. ACORN's governing documents provide for members who pay dues and elect local governing boards, who in turn appoint representatives to the national ACORN governing board.
3. As Head Organizer in Maryland, I would be aware of activities ACORN conducts in Maryland with regard to elections.
4. The Maryland primary election took place on February 12, 2008. At no time in the preceding 90 days did ACORN make any public communications that referred to either Donna Edwards or Al Wynn. In this context, I understand "public communications" to mean the following communications made to the general public (i.e., to people other than ACORN members): broadcast, cable, or satellite communication; newspaper, magazine, or outdoor advertising facility; mass mailing (more than 500 pieces of identical or substantially similar nature within a 30-day period); telephone bank (more than 500 telephone calls of an identical or substantially similar nature within 30-day period); or any other form of general public political advertising.
5. ACORN did not pay for any broadcast communications that referred to either Edwards or Wynn within the 30 days before the primary.
6. ACORN did not at any time make a communication to the public that disseminated or redistributed, in whole or in part, campaign materials prepared by the Edwards campaign.
7. ACORN members had a meeting with Donna Edwards in the ACORN offices. The press was invited to this members-only event, and at the meeting ACORN's endorsement of Edwards was announced. Other than this event, ACORN did not at any time make a communication to the public that expressly advocated the election or defeat of either Edwards or Wynn.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Stuart Katzenberg

May 21, 2008
date

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FEDERAL ELECTION COMMISSION

RE: MUR 5970

DECLARATION OF MITCH KLEIN

1. My name is Mitch Klein.
2. In 2006, I was the Head Organizer for ACORN in Maryland.
3. In my capacity as ACORN Head Organizer I was requested by national ACORN and CSI officials to serve in an advisory role to Citizens Services Inc. to assist their staff in helping to design and implement a field program for the Donna Edwards Campaign. I participated in discussions about strategy and costs for the campaign. These discussions included means by which ACORN would provide services for CSI for pieces of an outreach program particularly in the areas of field strategy and management and a phone program.
4. CSI paid ACORN an agreed-upon amount to pay for the services ACORN provided related to this program.
5. In my advisory role I reviewed invoices for work prepared by CSI staff for submission to the Edwards campaign and assisted CSI staff and the Edwards campaign in decisions to scale back the program when the Edwards campaign did not meet its fundraising targets.
6. As head organizer of ACORN, I had no knowledge of any public communications made by ACORN during the time of the 2006 primary campaign that referred to either Wynn or Edwards other than as part of the services provided under the CSI contract to the Edwards campaign. In this context, I understand "public communications" to mean the following communications made to the general public (i.e., to people other than ACORN members): broadcast, cable, or satellite communication; newspaper, magazine, or outdoor advertising facility; mass mailing (more than 500 pieces of identical or substantially similar nature within a 30-day period); telephone bank (more than 500 telephone calls of an identical or substantially similar nature within 30-day period); or any other form of general public political advertising.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.


Mitch Klein

3-21-08
date

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